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14	Rick Elice, Des McAnuff, DSHT, Inc., Dodger Theatricals, Ltd. and JB Viva Vegas, LP	
15	UNITED STATES DISTRICT COURT DISTRICT OF NEVADA	
16		
17	DONNA CORBELLO,	Case No. 2:08-cv-867-RCJ-PAL
18	Plaintiff	NEW DEFENDANTS'
19	v.	MOTION TO SEAL EXHIBIT 4 IN SUPPORT OF THEIR CONSOLIDATED
20	THOMAS GAETANO DEVITO et al.,	OPPOSITION TO PLAINTIFF'S FIVE MOTIONS TO COMPEL
21	Defendants.	
22		
23	Pursuant to the Stipulated Protective Order (Doc. 94) and the Court's Order Regarding	
24	Sealing Requirements (Doc. 95), New Defendants Frankie Valli, Robert J. Gaudio, Marshall	
25	Brickman, Eric S. Elice, Des McAnuff, DSHT, Inc., Dodger Theatricals, Ltd. and JB Viva Vegas	
26	request leave to file certain documents under seal as Exhibit 4 to their consolidated Opposition to	
27	plaintiff's five (5) motions to compel (Docs. 356, 360, 362, 371, and 375, collectively "Motions	
	to Compel").	
LIONEL SAWYER & COLLINS ATTORNEYS AT LAW 1700 BANK OF AMERICA PLAZA 300 SOUTH FOURTH ST. LAS VEGAS, NEVADA 89101 (702) 383-8888		

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POINTS & AUTHORITIES

Pursuant to the *Stipulated Protective Order* (*Doc. 94*) and the Court's *Order Regarding Sealing Requirements* (*Doc. 95*), New Defendants seek to file the following documents under seal as Exhibit 4 to their consolidated Opposition to plaintiff's Motions to Compel, which are Confidential:

- 1) JB-0025200 to JB-0025209, February 2009 Monthly Compilation Statement of JB Chicago Zephyr L.P., produced to Plaintiff in July 2009; and
- 2) JB-0025450 to JB-0025454, February 2009 Monthly Compilation Statement of Jersey Boys Broadway Limited Partnership, produced to Plaintiff in July 2009.

As mentioned, the proposed sealed documents are being filed in connection with non-dispositive discovery motions. "The public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)(*quoting Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). Indeed, the Ninth Circuit has "carved out an exception to the presumption of access to judicial records ... for a sealed discovery document [attached] to a non-dispositive motion, such that the usual presumption of the public's right of access is rebutted." *Kamakana*, 447 F.3d at 1179 (*internal quotations and citations omitted*).

Because the proposed documents are being filed in connection with non-dispositive motions, they fall within the exception carved out by the Ninth Circuit and leave to file them under seal should be granted. Moreover, there is good cause to seal the proposed financial documents because they are being filed pursuant to the *Order Regarding Sealing Requirements* (*Doc. 95*). "[W]hen a district court grants a protective order to seal documents during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Kamakana*, 447 F.3d at 1179-1180 (*quoting Philips*, 307 F.3d at 1213).

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There is additional good cause to file these two documents under seal because they 1 2 contain sensitive and proprietary financial information such as profit and loss, salaries, 3 expenditures of advertising, etc., the public disclosure of which would be competitively harmful 4 to Dodger Theatricals, Ltd. and the limited partners. 5 **CONCLUSION** 6 Based upon the foregoing, New Defendants request should be granted. 7 8 LIONEL SAWYER & COLLINS 9 MILLER KORZENIK SOMMERS LLP LEOPOLD, PETRICH & SMITH, P.C. 10 By: S/ David S. Korzenik 11 Samuel S. Lionel, Bar 1766 Maximiliano D. Couvillier III, Bar 7661 12 Daniel Mayeda (Pro Hac Vice) 13 David S. Korzenik (Pro Hac Vice) 14 Attorneys for Defendants Frankie Valli, Robert J. Gaudio, Marshall Brickman, Eric S. Elice aka 15 Rick Elice, Des McAnuff, DSHT, Inc., Dodger Theatricals, Ltd. and JB Viva Vegas, LP 16 17 18 IT IS SO ORDERED 19 20 21 Dated: February 23, 2011 22 23 24 25 26 27

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1 2	<u>Certificate of Service</u>
3	I certify that on February 18, 2011, I electronically filed the foregoing NEW
4	DEFENDANTS' MOTION TO SEAL EXHIBIT 4 IN SUPPORT OF THEIR
5	CONSOLIDATED OPPOSITION TO PLAINTIFF'S FIVE MOTIONS TO COMPEL and
7	this certificate of service with the clerk of the Court using the ECF system which will send
8	notification of such filing to the following:
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26	John L. Krieger, Bar #6023 George L. Paul (Pro Hac Vice) LEWIS & ROCA 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 JKrieger@Irlaw.com Gpaul@Irlaw.com Gregory H. Guillot (Pro Hac Vice) GREGORY H. GUILLOT, PC 13455 Noel Road, Suite 1000 Dallas, Texas 75240 ggmark@radix.net Attorneys for Plaintiff L. Bradley Hancock (Pro Hac Vice) Booker T. Evans, Bar #1209 Alma Chao, Bar #10538 GREENBERG, TRAURIG, LLP 3773 Howard Hughes Parkway, Suite 500 North Las Vegas, Nevada 89169 evansb@gtlaw.com chaoa@gtlaw.com Attorneys for Defendant Thomas Gaetano DeVito
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